



Billing Code 3410-08-P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 407 and 457

RIN 0563-AC69

[Docket ID FCIC-20-0005]

Area Risk Protection Insurance Regulations; Common Crop Insurance Policy Basic Provisions; and Common Crop Insurance Regulations, Coarse Grains Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Area Risk Protection Insurance (ARPI) Regulations; Common Crop Insurance Policy (CCIP) Basic Provisions; and the Common Crop Insurance Regulations, Coarse Grains Crop Insurance Provisions. The intended effect of this action is to implement the changes contained in the Agriculture Improvement Act of 2018 (commonly referred to as the 2018 Farm Bill). Section 11122 of the 2018 Farm Bill required that FCIC research and develop methods of adjusting for quality losses. In addition to the 2018 Farm Bill required changes, FCIC is updating provisions regarding premium offsets, Administrator reinstatement, notice of loss, double cropping requirements, prevented planting, and units. The changes to the policy made in this rule are applicable for the 2021 crop year for crops with a contract change date on or after June 30, 2020. For all crops the changes to the policy made in this rule are applicable for the 2022 and succeeding crop years.

DATES: *Effective Date:* This final rule is effective June 30, 2020.

Comment Date: FCIC will accept comments on this rule until close of business

[Insert date 60 days after publication in the *FEDERAL REGISTER*]. FCIC may consider the comments received and may conduct additional rulemaking based on the comments.

ADDRESSES: We invite you to submit comments on this rule. In your comments, include the date, volume, and page number of this issue of the *Federal Register*, and the title of rule. You may submit comments by any of the following methods, although FCIC prefers that you submit comments electronically through the Federal eRulemaking Portal:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and search for Docket ID FCIC-20-0005. Follow the online instructions for submitting comments.
- Mail: Director, Product Administration and Standards Division, Risk Management Agency, U.S. Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133-6205.

All comments received, including those received by mail, will be posted without change and publicly available on <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Francie Tolle; telephone (816) 926-7829, email francie.tolle@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

FCIC serves America's agricultural producers through effective, market-based risk management tools to strengthen the economic stability of agricultural producers and

rural communities. The Risk Management Agency (RMA) manages FCIC. FCIC is committed to increasing the availability and effectiveness of Federal crop insurance as a risk management tool. Approved Insurance Providers (AIPs) sell and service Federal crop insurance policies in every state and in Puerto Rico through a public-private partnership. FCIC reinsures the AIPs who share the risks associated with catastrophic losses due to major weather events. FCIC's vision is to secure the future of agriculture by providing world class risk management tools to rural America.

Federal crop insurance policies typically consist of the Basic Provisions, the Crop Provisions, the Special Provisions, the Commodity Exchange Price Provisions, if applicable, other applicable endorsements or options, the actuarial documents for the insured agricultural commodity, the Catastrophic Risk Protection Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV.

FCIC amends the ARPI Basic Provisions, the CCIP Basic Provisions, and the Coarse Grains Crop Insurance Provisions (Coarse Grains Crop Provisions). The changes to the policy made in this rule are applicable for the 2021 crop year for crops with a contract change date on or after June 30, 2020. For all other crops the changes to the policy made in this rule are applicable for the 2022 and succeeding crop years.

ARPI Basic Provisions

The changes to the ARPI Basic Provisions (7 CFR part 407) are as follows:

FCIC is revising the definition of "second crop" to clarify what is considered a second crop. FCIC removed references of a cover crop that is hayed or grazed to provide flexibility to producers to use a cover crop for forage while considering a cover crop otherwise harvested as grain to be a second crop. For example, now a cover crop will not

be considered a second crop unless it is planted for harvest as grain or seed. A cover crop is used for soil erosion and conservation purposes and not for harvest as grain or seed. For example, barley planted at a reduced seeding rate approved for cover crop use and used for forage would not be considered a second crop. However, barley planted at a full seeding rate for harvest as grain would be considered a second crop.

FCIC is revising section 2(j) to clarify when AIPs must apply premium credits when paying a claim on a policy. AIPs must apply premium credits when paying a claim on a policy. There has been some confusion regarding when an AIP must offset premium and administrative fees owed to them when an indemnity or prevented planting payment is simultaneously owed to the producer. This has led to situations where the producer incorrectly assumed their premium had been deducted from their indemnity payment and did not pay their premium when their premium statement came in the mail. Consequently, because the producer did not pay the full amount owed, as shown on the premium statement, they became ineligible for future insurance.

There has also been confusion on whether the AIP is required to apply an offset for any other crop policy insured with the AIP and whether the loss payment was being issued before or after the premium billing date. Producers may have multiple policies with an AIP (policies are issued on a crop and county basis), and each policy may have its own premium billing date. FCIC is revising this section to clarify for a crop policy with an indemnity due, the producer's premium and administrative fees for that same crop policy will be offset from any indemnity or prevented planting payment due to the producer even if it is prior to the premium billing date (will be applied automatically).

For any other crop policy insured with the AIP, if the claim is to be paid:

- 1) Prior to the premium billing date, and the producer agrees, their premium and administrative fees will be offset from any indemnity or prevented planting payment due them (will not be applied automatically); or
- 2) On or after the premium billing date, the producer's premium and administrative fees will be offset from any indemnity or prevented planting payment due to the producer (will be applied automatically).

For example, a producer in Allen County, Kansas, insures both winter wheat and corn. Winter wheat has a premium billing date of July 1 and corn has a premium billing date of August 15. The producer was prevented from planting corn in April. The AIP must take the amount owed for premium and administrative fees for corn from the prevented planting payment. Because it is before the premium billing date for winter wheat, the AIP may take the amount owed for premium and administrative fees for winter wheat with the producer's consent.

FCIC is revising section 2(k)(2)(iii) and adding new section 2(k)(2)(iii)(C)(1)(iv) to broaden the authority given to the RMA's Administrator to reinstate producers that inadvertently failed to pay a debt timely. In addition, FCIC is authorizing the AIPs to allow reinstatement up to 15 calendar days after a due date for payment received during a previously executed payment agreement. This includes clarifying that in order to be reinstated, when a producer has a previously executed a written payment agreement to pay a debt, they are required to pay the amount due specified in the payment agreement, rather than the full amount owed. The remaining portion of the payment agreement is not yet due.

FCIC is adding a new section 13(c)(5) to allow the allocation of comingled first and second crop production to the associated crop acreage in proportion to the liability for the acreage that was and was not double cropped. Producers had found challenges keeping separate records of acreage and production that was and was not double cropped because often the acreage is in the very same field and they harvest both first and second crop production at the same time. For example, a producer has two fields in the same unit which are next to each other (contiguous). On one field they plant wheat, harvest the wheat, and then plant double crop soybeans. The other field was a single crop of soybeans only. The producer may harvest both soybean fields at the same time making it difficult to keep the production separate. This provision is currently contained in the CCIP Basic Provisions and it is also appropriate in the ARPI Basic Provisions.

FCIC is adding a new section 13(c)(6) to address double cropping requirements when another plan of insurance does not require records of production. FCIC is adding a new paragraph to state that each insured crop must follow its own Basic Provisions, Crop

Provisions, and Special Provisions to determine if the double cropping requirements have been met. If the double cropping requirements in the applicable Basic Provisions, Crop Provisions, or Special Provisions have not been met for each insured crop, the Basic Provisions for that crop policy apply regarding payment reductions when the double cropping requirements are not met. For example, a producer may have both a policy under the Rainfall and Vegetation Index plan of insurance (RIVI provisions) and CCIP Basic Provisions. If a crop insured under the Annual Forage Crop Provisions (an insurance policy that uses the RIVI provisions) is involved in a scenario where the AIP is determining if the acreage meets the double cropping requirements or if the first crop and second crop rules apply, the Annual Forage Crop Provisions and RIVI provisions should be followed not the CCIP Basic Provisions.

FCIC is revising section 13(d) to explain how to determine a producer's double cropping acreage eligibility. To qualify for double cropping, a producer must have records that show the acreage was double cropped in at least 2 of the last 4 crop years in which the first insured crop was grown or have records that show the applicable acreage meets this requirement. The producer's double cropping acreage eligibility is then limited to the highest number of acres double cropped within the applicable 4-year period.

FCIC is also adding a new section 13(d)(3) to allow eligible double cropping acres to be based on either:

- 1) The greatest number of acres double cropped in 2 of the last 4 crop years in which the first insured crop was grown; or

- 2) The percentage of acres historically double cropped in 2 of the last 4 crop years in which the first insured crop was grown.

For example, if a producer has a 100-acre farm and has historically double cropped 50 acres planted to wheat followed by soybeans (50 percent of acres historically double cropped), and the producer purchases and plants an additional 200 acres of wheat for a total of 300 acres of planted wheat, the number of acres eligible for double cropping would be based on 50 percent, or 150 acres. If the producer has historically double cropped wheat followed by soybeans on some or even all of the acreage, there is a reasonable presumption they may continue to do so in the future. This change is currently contained in the CCIP Basic Provisions and it is appropriate in the ARPI Basic Provisions.

CCIP Basic Provisions

The changes to the CCIP Basic Provisions (7 CFR part 457.8) are as follows:

FCIC is revising the definition of “basic unit” to clarify and exclude a portion of the crop in the county acreage that was reported as an enterprise unit. A basic unit is all insurable acreage of the insured crop in the county on the date coverage begins for the crop year in which the insured has 100 percent crop share, or which is owned by one person and operated by another person on a share basis. For example, if an insured owns land and rents land from two landlords on a share basis, they would have three basic units for the insured crop in the county. FCIC is revising the definition to clarify and exclude a portion of the crop in the county acreage that was reported as an enterprise unit. As written, the definition of the basic unit includes all insurable acreage of the crop in the county; however, some of the acreage can be reported as an enterprise unit, which has a

separate definition. Therefore, FCIC is updating the definition of “basic unit” to correctly reflect the acreage interactions with enterprise units and optional units. An enterprise unit is all insurable acreage of a crop or all insurable irrigated or non-irrigated acreage of the crop in the county in which the insured has a share. An enterprise unit can be comprised of multiple basic units. An optional unit is a subdivision of a basic unit. A basic unit can be comprised of multiple optional units.

FCIC is revising the definition of “second crop” to clarify what is considered a second crop. FCIC removed references of a cover crop that is hayed or grazed to provide flexibility to producers to utilize a cover crop for forage while considering a cover crop otherwise harvested as grain to be a second crop. For example, now a cover crop will not be considered a second crop unless it is planted for harvest as grain or seed. For example, barley planted at a reduced seeding rate approved for cover crop use and used for forage would not be considered a second crop. However, barley planted at a full seeding rate for harvest as grain would be considered a second crop. FCIC is adding corresponding changes to section 15(g)(3) of the Basic Provisions to allow silage, haylage, and baleage to be treated the same as haying and grazing in regard to cover and volunteer crops when it comes to payment reductions when a crop is prevented from being planted and a volunteer crop or cover crop is hayed, or grazed, or cut for silage, haylage, or baleage from the same acreage during the crop year.

FCIC is revising the definition of “veteran farmer or rancher” by replacing the word “and” with “or” after the phrase, “Air Force,”. FCIC is also revising the definition to use semicolons to separate the items of the list in this definition because one of the items in the list contains commas and a semicolon will avoid potential confusion.

FCIC is revising section 2(e) to clarify when AIPs must apply premium credits when paying a claim on a policy. AIPs must apply premium credits when paying a claim on a policy. There has been some confusion regarding when an AIP must offset premium and administrative fees owed to them when an indemnity or prevented planting payment is simultaneously owed to the producer. This has led to situations where the producer incorrectly assumed their premium had been deducted from their indemnity payment and did not pay their premium when their premium statement came in the mail. Consequently, because the producer did not pay the full amount owed, as shown on the premium statement, they became ineligible for future insurance.

There has also been confusion on whether the AIP is required to apply an offset for any other crop policy insured with the AIP and whether the loss payment was being issued before or after the premium billing date. Producers may have multiple policies with an AIP (policies are issued on a crop and county basis), and each policy may have its own premium billing date. FCIC is revising this section to clarify for a crop policy with an indemnity due, the producer's premium and administrative fees for that same crop policy will be offset from any indemnity or prevented planting payment due to the producer even if it is prior to the premium billing date (will be applied automatically).

For any other crop policy insured with the AIP, if the claim is to be paid:

- 1) Prior to the premium billing date, and the producer agrees, their premium and administrative fees will be offset from any indemnity or prevented planting payment due them (will not be applied automatically); or

- 2) On or after the premium billing date, the producer's premium and administrative fees will be offset from any indemnity or prevented planting payment due to the producer (will be applied automatically).

For example, a producer in Allen County, Kansas insures both winter wheat and corn. Winter wheat has a premium billing date of July 1 and corn has a premium billing date of August 15. The producer was prevented from planting corn in April. The AIP must take the amount owed for premium and administrative fees for corn from the prevented planting payment. Because it is before the premium billing date for winter wheat, the AIP may take the amount owed for premium and administrative fees for winter wheat with the producer's consent.

FCIC is revising section 2(f)(2)(iii) and adding new section 2(f)(2)(iii)(C)(1)(iv) to broaden the authority given to the RMA's Administrator to reinstate producers that inadvertently failed to pay a debt timely. In addition, FCIC is authorizing the AIPs to allow reinstatement up to 15 calendar days after a due date for payment received during a previously executed payment agreement. This includes clarifying that in order to be reinstated, when a producer has a previously executed written payment agreement to pay a debt, they are required to pay the amount due specified in the payment agreement, rather than the full amount owed. The remaining portion of the payment agreement is not yet due.

FCIC is revising section 4(c) and adding paragraph (d). Changes to section 4 were made in the Catastrophic Risk Protection Endorsement; Area Risk Protection Insurance Regulations; and Common Crop Insurance Policy Basic Provisions Final rule with request for comments, published in the *Federal Register* on June 28, 2019 (84 FR

30857). The change made in that rule provided that AIPs will send the changes electronically, unless the policyholder requested a hard copy. The changes described in that rule were not made in the Code of Federal Regulations. This rule is making the required technical corrections to make that change now.

FCIC is revising section 14(b)(5) to clarify a notice of loss must be filed, by the producer, for an AIP to consider whether the delayed notice impacts their ability to adjust losses as provided by section 14(b)(5). This was in response to agents filing a blanket notice of loss on behalf of producers and producers not being aware a loss was filed on their behalf. For example, starting in 2016, 85 percent of burley tobacco claims were filed on July 1 and listed that date of damage. These claims were being filed on the first of the month with anticipation of a loss later. Large claims were investigated by RMA and discussed with the producer that at the time, the producer did not expect a loss.

FCIC is revising section 15(g)(3)(i) to state the reduction in prevented planting payment will apply if a volunteer crop or cover crop is hayed, grazed, or cut for silage, haylage, or baleage from the same acreage, after the late planting period (or after the final planting date if a late planting period is not applicable) for the first insured crop in the same crop year. Prior to this final rule, the provisions in the regulation did not treat cutting a volunteer crop or cover crop for silage, haylage, or baleage the same as it does for haying and grazing. This change will allow silage, haylage, and baleage to be treated the same as haying and grazing regarding cover and volunteer crops.

FCIC is removing the provisions from section 15(h)(5)(i) and moving the provisions to a new section 15(i)(3). The provisions provide instructions to determine the

amount of historical double cropping acres that are available to use for insurance in the current crop year.

FCIC is adding a new section 15(h)(7) to address double cropping requirements when another plan of insurance does not require records of production. FCIC is adding a new section to provide that each insured crop must follow its own Basic Provisions, Crop Provisions, and Special Provisions to determine if the double cropping requirements have been met. If the double cropping requirements in the applicable Basic Provisions, Crop Provisions, or Special Provisions have not been met for each insured crop, the Basic Provisions for that crop policy apply regarding payment reductions when the double cropping requirements. For example, a producer may have both a policy under the RIVI provisions and CCIP Basic Provisions. If the Annual Forage Crop Provisions (an insurance policy that uses the RIVI provisions) is one of the crops involved in a scenario where the AIP is determining if the acreage meets the double cropping requirements or if the first crop and second crop rules apply, the Annual Forage Crop Provisions and RIVI provisions should be followed not the CCIP Basic Provisions.

FCIC is revising the language in 15(i) to explain how to determine a producer's double cropping acreage eligibility. To qualify for double cropping a producer must have records that show the acreage was double cropped in at least 2 of the last 4 crop years in which the first insured crop was grown or have records that show the applicable acreage meets this requirement. The producer's double cropping acreage eligibility is then limited to the highest number of acres double cropped within the applicable 4-year period.

FCIC is adding a new section 17(e)(1)(iii)(C) to clarify how eligible acres are determined for crops that require a processor contract to be insured. FCIC has been asked to address situations where some producers had reduced contracted acreage, which was not reduced solely due to prevented planting, or have no contracted acres for the current crop year. Some producers in this reduced or no contracted acres scenario have exhausted all eligible prevented planting acreage and are not eligible to provide prevented planting coverage to remaining cropland acres. Therefore, FCIC is adding new section 17(e)(iii)(C) to allow a producer who has exhausted eligible acres to provide prevented planting coverage for all insured cropland acres in the farming operation due to a reduced contract in the current crop year, to use the previous crop year's contract for the remaining acres. This is to incorporate changes issued under Manager's Bulletin: MGR-19-029 (Prevented Planting Eligible Acre History when Contracted Crop Acres are Reduced), published on RMA's website on December 23, 2019. FCIC has also added a reference to the new section 17(e)(1)(iii)(C) in section 17(h)(4).

For example, a producer has always grown 1,000 acres of contracted sugar beets, 1,000 acres of soybeans, and 1,000 acres of corn. For the 2020 crop year, the producer's sugar beet contract was reduced to 500 acres. The producer still has 3,000 cropland acres available to plant. Therefore, the producer plans to plant 500 acres of sugar beets, 1,250 acres of soybeans, and 1,250 acres of corn. With a wet spring, the producer is only able to plant 1,000 acres of corn, 1,000 acres of soybeans, and 500 acres of contracted sugar beets. Under the provisions prior to this regulation, the producer would not have qualified for prevented planting on the remaining 500 acres in the farming operation (despite that they have planted and insured 3,000 cropland acres in the past 5 years)

because section 17(e)(1)(iii) stated that the number of eligible acres for any crop that must be contracted with a processor to be insured will be the number of acres specified in the processor contract. However, under the provisions prior to this rule, if there was no contract in place, the producer could use their history of the contracted crop. Under the revised provisions, if the producer has exhausted eligible acres to provide prevented planting coverage for all insured cropland acres in the farming operation due to a reduced contract in the current crop year, the previous crop year's contract may be used for the remaining acres. In this example, the producer would be eligible for 3,000 acres of prevented planting paid in accordance with section 17(h) of the CCIP Basic Provisions.

FCIC is revising section 17(f)(4)(ii) regarding how to determine a producer's double cropping acreage eligibility. Consistent with section 15(i), to qualify for double cropping a producer must have records that show the acreage was double cropped in at least 2 of the last 4 crop years in which the insured crop that is prevented from being planted was grown or have records that show the applicable acreage meets this requirement. The producer's double cropping acreage eligibility is then limited to the highest number of acres double cropped within the applicable 4-year period.

FCIC is revising section 17(f)(5) to revise prevented planting and cover crops provisions. FCIC is clarifying that haying or grazing a cover crop will not impact eligibility for a prevented planting payment provided such action did not contribute to the acreage being prevented from planting. This incorporates allowances from a Special Provisions statement and in result, the Special Provisions statement is removed.

FCIC is revising section 34(a)(4)(viii)(C) to clarify current unit structure options and add an additional unit option when enterprise units for both irrigated and non-

irrigated practices are elected, but the producer doesn't qualify. If discovery for not qualifying is on or before the acreage reporting date, the producer has an additional option to elect an enterprise unit on one practice and a basic or optional unit on the other practice. Previously, a producer's options were either one enterprise unit containing both practices or basic or optional units for both practices, whichever the producer reported on the acreage report and qualified for.

FCIC is adding provisions to section 36 to provide another risk management option to producers that will allow a producer to replace post-quality production amounts in the APH databases with their pre-quality production amounts, therefore increasing their APH database yield for individual crop years with a Notice of Loss. This quality loss option's overall impact is to prevent an insured producer's guarantee from declining due to low quality when this option is elected.

Section 11122 of the 2018 Farm Bill required that FCIC research and develop methods of adjusting for quality losses that:

- 1) Do not impact the actual production history of a producer;
- 2) Allow producers to exclude a quality loss from their actual production history when the quality loss is insufficient to trigger an indemnity payment;
- 3) Is optional for a producer to use; and
- 4) Is offered at an actuarially sound premium rate.

Over the past year, RMA has conducted research and development efforts as required by the 2018 Farm Bill, including extensive stakeholder outreach, for implementing this option.

Coarse Grains Crop Insurance Provisions

The changes to the Coarse Grains Crop Insurance Provisions (7 CFR 457.113) are:

FCIC is revising section 2(c)(1) to replace the phrase, “or separate enterprise units for both,” with “or separate enterprise units for one or both practices,” to clarify what options for enterprise unit elections are available. As previously written, the intended meaning may not have been clear and the change will make it clear that if enterprise unit elections are made, an enterprise unit must be elected by both FAC and NFAC practices, rather than the option of electing an enterprise unit for one practice, and basic or optional units on the other practice; or enterprise units for both practices.

FCIC is revising section 2(a)(i)(4) to clarify current unit structure options and add an additional unit option when enterprise units for both FAC (Following Another Crop) and NFAC (Not Following Another Crop) cropping practices are elected, but the producer doesn’t qualify. If discovery for not qualifying is on or before the acreage reporting date, the producer has an additional option to elect an enterprise unit on one cropping practice and a basic or optional unit on the other cropping practice. Previously, a producer’s options were either one enterprise unit containing both cropping practices or basic or optional units for both cropping practices, whichever the producer reported on the acreage report and qualified for. This is consistent with similar changes made to the CCIP Basic Provisions for enterprise units by separate irrigation practices.

Miscellaneous Changes

In addition to the changes discussed above, FCIC is making non-substantive changes in the regulations. Examples of these changes include making references

consistent, updating the website address, making grammatical corrections, and clarifying word changes.

FCIC is revising references throughout the regulations in §§ 407.9 and 457.8 to consistently refer to “FCIC procedures.” FCIC refers to these documents inconsistently throughout the ARPI and the CCIP regulations. For example, the same documents are referred to as “procedures issued by FCIC” and “FCIC issued procedures.”

FCIC is revising the ARPI definition of “actuarial documents” to remove the reference to “<http://www.rma.usda.gov/>.” The definition refers to RMA’s website which refers to this URL, therefore the URL is not needed in the definition of “actuarial documents.”

FCIC is revising the definition of “veteran farmer or rancher” in ARPI and CCIP to make minor, non-substantive grammatical corrections.

FCIC is revising ARPI section 3(d) to revise the word “provided” to “notified” for clarity.

FCIC is revising ARPI section 20(b)(3) and CCIP section 33(b)(3) to change the beginning of the paragraph from “Will be conclusively” to “Conclusively” because the lead-in contained in the introductory paragraph of each of those sections already contains the term “will be.”

FCIC is revising the ARPI and CCIP definition of “RMA website” to replace the URL with the current URL www.rma.usda.gov.

Effective Date and Notice and Comment

The Administrative Procedure Act (APA, 5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the

rule involves specified actions, including matters relating to contracts. This rule governs contracts for crop insurance policies and therefore falls within that exemption.

For major rules, the Congressional Review Act requires a delay the effective date of 60 days after publication to allow for Congressional review. This rule is not a major rule under the Congressional Review Act, as defined by 5 U.S.C. 804(2). Therefore, this final rule is effective June 30, 2020. Although not required by APA or any other law, FCIC has chosen to request comments on this rule.

Executive Orders 12866, 13563, 13771 and 13777

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives, and if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant. Executive Order 13777, “Enforcing the Regulatory Reform Agenda,” established a Federal policy to alleviate unnecessary regulatory burdens on the American people.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, “Regulatory Planning and Review,” and therefore, OMB has not reviewed this rule and analysis of the costs and benefits is not required under either Executive Order 12866 or 13563.

Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” requires that in order to manage the private costs required to comply with Federal regulations that for every new significant or economically significant regulation issued, the new costs must be offset by savings from deregulatory actions. As this rule is designated as not significant, it is not subject to Executive Order 13771. In a general response to the requirements of Executive Order 13777, USDA created a Regulatory Reform Task Force, and USDA agencies were directed to remove barriers, reduce burdens, and provide better customer service both as part of the regulatory reform of existing regulations and as an ongoing approach. FCIC reviewed this regulation and made changes to improve any provision that was determined to be outdated, unnecessary, or ineffective.

Clarity of the Regulation

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this rule, we invite your comments on how to make the rule easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?

- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by SBREFA, generally requires an agency to prepare a regulatory analysis of any rule whenever an agency is required by APA or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because as noted above, this rule is exempt from APA and no other law requires that a proposed rule be published for this rulemaking initiative.

Environmental Review

In general, the environmental impacts of rules are to be considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347) and the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508). FCIC conducts programs and activities that have been determined to have no individual or cumulative effect on the human environment. As specified in 7 CFR 1b.4, FCIC is categorically excluded from the preparation of an Environmental Analysis or Environmental Impact Statement unless the FCIC Manager (agency head) determines that an action may have a significant environmental effect. The FCIC Manager has determined this rule will not have a significant environmental effect. Therefore, FCIC will not prepare an environmental assessment or environmental impact

statement for this action and this rule serves as documentation of the programmatic environmental compliance decision.

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. For reasons specified in the final rule related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities in this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 are to be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by

law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.”

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

RMA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that require Tribal consultation under EO 13175. The regulation changes do not have Tribal implications that preempt Tribal law and are not expected have a substantial direct effect on one or more Indian Tribes. If a Tribe requests consultation, RMA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by Congress.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector. Agencies generally must prepare a written

statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Program

The title and number of the Federal Domestic Assistance Program listed in the Catalog of Federal Domestic Assistance to which this rule applies is No. 10.450 – Crop Insurance.

Paperwork Reduction Act of 1995

In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), the rule does not change the information collection approved by OMB under control numbers 0563-0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects

7 CFR Part 407

Acreage allotments, Administrative practice and procedure, Barley, Corn, Cotton, Crop insurance, Peanuts, Reporting and recordkeeping requirements, Sorghum, Soybeans, Wheat.

7 CFR Part 457

Acreage allotments, Crop insurance, Reporting and recordkeeping requirements.

For the reasons discussed above, FCIC amends 7 CFR parts 407 and 457, effective for the 2021 crop year for crops with a contract change date on or after June 30, 2020, and for the 2022 and succeeding crop years for all other crops, as follows:

PART 407— AREA RISK PROTECTION INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 407 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(o).

2. Amend § 407.9 as follows:

- a. In the introductory text, remove the year “2017” and add “2021” in its place;

- b. Under the second heading for “[FCIC Policies]”, revise the second and third paragraphs;

- c Under the second heading for “[Reinsured Policies]”, revise the second and fourth paragraphs;

- d. In section 1:

- i. In the definition of “actuarial documents”, remove the phrase “RMA's Website, <http://www.rma.usda.gov/>,” and add “RMA’s website” in its place;

- ii. In the definition of “production report”, remove the words “FCIC approved procedures” and add “FCIC procedures” in their place;

- iii. In the definition of “RMA’s website”, remove the website address “http://www.rma.usda.gov/” and add “www.rma.usda.gov” in its place; and
- iv. Revise the definitions of “second crop” and “veteran farmer or rancher;”
- e. In section 2:
 - i. Add paragraphs (j)(3) and (4);
 - ii. Revise paragraph (k)(2)(iii)(B)(I);
 - iii. In paragraph (k)(2)(iii)(C) introductory text, remove the words “FCIC issued procedures” and add “FCIC procedures” in their place;
 - iv. In paragraph (k)(2)(iii)(C)(I)(ii), remove the word “or” at the end of the paragraph;
 - v. In paragraph (k)(2)(iii)(C)(I)(iii), add the word “or” at the end of the paragraph; and
 - vi. Add paragraph (k)(2)(iii)(C)(I)(iv);
- f. In section 3, in paragraph (d), remove the word “provided” and add “notified” in its place;
- g. In section 7, in paragraph (i)(2)(i)(A), remove the words “FCIC approved procedures” and add “FCIC procedures” in their place;
- h. In section 13:
 - i. In paragraph (c)(4), remove the period at the end of the paragraph and add a semicolon in its place;
 - ii. Add paragraphs (c)(5) and (6);
 - iii. Revise paragraph (d) introductory text; and
 - iv. Add paragraph (d)(3);

i. In section 20, in paragraph (b)(3), remove the words “Will be conclusively” and add “Conclusively” in their place.

The revisions and additions read as follows:

§ 407.9 Area risk protection insurance policy.

This insurance is available for the 2021 and succeeding years.

* * * *

[FCIC policies]

* * * *

This is an insurance policy issued by FCIC, under the provisions of the Federal Crop Insurance Act (7 U.S.C. 1501-1524) (Act). All provisions of the policy and rights and responsibilities of the parties are specifically subject to the Act. The provisions of the policy may not be waived or modified in any way by us, your insurance agent, or any employee of USDA. FCIC procedures (handbooks, underwriting rules, manuals, memoranda, and bulletins), and published on the Risk Management Agency's (RMA) website at www.rma.usda.gov or a successor website, will be used in the administration of this policy, including the adjustment of any loss or claim submitted under this policy. Throughout this policy, “you” and “your” refer to the insured shown on the accepted application and “we,” “us,” and “our” refer to FCIC. Unless the context indicates otherwise, the use of the plural form of a word includes the singular and the singular form of the word includes the plural.

AGREEMENT TO INSURE: In return for the commitment to pay a premium, and subject to all of the provisions of this policy, we agree with you to provide the insurance as stated in this policy. If there is a conflict between the Act, the regulations in

7 CFR chapter IV, and FCIC procedures, the order of precedence is: (1) the Act; (2) the regulations; and (3) FCIC procedures. If there is a conflict between the policy provisions in 7 CFR part 407 and the administrative regulations in 7 CFR part 400, the policy provisions published at 7 CFR part 407 apply. The order of precedence for the policy is: (1) the Catastrophic Risk Protection Endorsement, as applicable; (2) Special Provisions; (3) actuarial documents; (4) the applicable Commodity Exchange Price Provisions; (5) the Crop Provisions; and (6) these Basic Provisions.

[Reinsured policies]

* * * * *

This insurance policy is reinsured by FCIC under the provisions of Subtitle A of the Federal Crop Insurance Act (7 U.S.C. 1501-1524) (Act). All provisions of the policy and rights and responsibilities of the parties are specifically subject to the Act. The provisions of the policy may not be waived or varied in any way by us, our insurance agent or any other contractor or employee of ours, or any employee of USDA. We will use FCIC procedures (handbooks, underwriting rules, manuals, memoranda, and bulletins), published on the Risk Management Agency (RMA's) website at www.rma.usda.gov or a successor website, in the administration of this policy, including the adjustment of any loss or claim submitted under this policy. In the event that we cannot pay your loss because we are insolvent or are otherwise unable to perform our duties under our reinsurance agreement with FCIC, FCIC will become your insurer, make all decisions in accordance with the provisions of this policy, including any loss payments, and be responsible for any amounts owed. No state guarantee fund will be liable for your loss.

* * * * *

AGREEMENT TO INSURE: In return for the commitment to pay a premium, and subject to all of the provisions of this policy, we agree with you to provide the insurance as stated in this policy. If there is a conflict between the Act, the regulations in 7 CFR chapter IV, and FCIC procedures, the order of precedence is: (1) the Act; (2) the regulations; and (3) FCIC procedures. If there is a conflict between the policy provisions in 7 CFR part 407 and the administrative regulations in 7 CFR part 400, the policy provisions in 7 CFR part 407 apply. The order of precedence among the policy is: (1) the Catastrophic Risk Protection Endorsement, as applicable; (2) Special Provisions; (3) actuarial documents; (4) Commodity Exchange Price Provisions; (5) the Crop Provisions; and (6) these Basic Provisions.

* * * * *

1. Definitions

* * * * *

Second crop. With respect to a single crop year, the next occurrence of planting any commodity for harvest following a first insured crop on the same acreage. The second crop may be the same or a different agricultural commodity as the first insured crop, except the term does not include a replanted crop. If following a first insured crop, a cover crop is planted on the same acreage and harvested for grain or seed, it is considered to be a second crop. A cover crop that is covered by FSA's noninsured crop disaster assistance program (NAP) or receives other USDA benefits associated with forage crops will be considered a second crop. A crop meeting the conditions in this definition is considered to be a second crop regardless of whether or not it is insured.

* * * * *

Veteran farmer or rancher. (1) An individual who has served active duty in the United States Army, Navy, Marine Corps, Air Force, or Coast Guard, including the reserve components; was discharged or released under conditions other than dishonorable; and:

- (i) Has not operated a farm or ranch;
- (ii) Has operated a farm or ranch for not more than 5 years; or
- (iii) First obtained status as a veteran during the most recent 5-year period.

(2) A person, other than an individual, may be eligible for veteran farmer or rancher benefits if all substantial beneficial interest holders qualify individually as a veteran farmer or rancher in accordance with paragraph (1) of this definition. A spouse's veteran status does not impact whether an individual is considered a veteran farmer or rancher.

* * * * *

2. Life of Policy, Cancellation, and Termination.

* * * * *

- (j) * * *

(3) For this agricultural commodity policy, your premium and administrative fees will be offset from any indemnity payment due to you even if it is prior to the premium billing date.

(4) For any other agricultural commodity policy insured with us and it is:

(i) Prior to the premium billing date, and you agree, your premium and administrative fees will be offset from any indemnity payment due to you; or

(ii) On or after the premium billing date, your premium and administrative fees will be offset from any indemnity payment due to you.

(k) * * *

(2) * * *

(iii) * * *

(B) * * *

(I) In accordance with 7 CFR part 400, subpart U, and FCIC procedures, you provide documentation that your inadvertent failure to pay your debt is due to an unforeseen or unavoidable event or other extenuating circumstances that created the inadvertent failure for you to make timely payment;

* * * * *

(iv) For previously executed written payment agreements, you made the full payment of the scheduled payment amount owed within 15 calendar days after the missed payment date.

* * * * *

13. Indemnity and Premium Limitations.

* * * * *

(c) * * *

(5) If you do not have records of acreage and production specific to the double cropped acreage, as required in section 13(h)(4), but instead have records that combine production from acreage you double cropped with records of production from acreage you did not double crop, we will allocate the first and second crop production to the

specific acreage in proportion to the liability for the acreage that was and was not double cropped; and

(6) With respect to double cropped acreage for which one of the crops you have double cropped is insured under a plan of insurance not covered under these Basic Provisions, each insured crop must follow its own Basic Provisions, Crop Provisions, and Special Provisions to determine if the double cropping requirements have been met. If the double cropping requirements in the applicable Basic Provisions, Crop Provisions, or Special Provisions have not been met for each insured crop, section 13(a) of these Basic Provisions apply.

(d) If you provided acceptable records in accordance with section 13(c), your double cropping history is limited to the highest number of acres double cropped within the applicable four-year period as determined in section 13(c)(4).

* * * * *

(3) If you acquired additional land for the current crop year and the following calculation results in a greater number of double cropping acres than determined in section 13(c), you may apply the percentage of acres that you have previously double cropped to the total cropland acres that you are farming this year (if greater):

(i) Determine the number of acres of the first insured crop that were double cropped in each of the years for which double cropping records are provided (for example, records are provided showing: 100 acres of wheat planted in 2019 and 50 of those acres were double cropped with soybeans; and 100 acres of wheat planted in 2020 and 70 of those acres were double cropped with soybeans);

(ii) Divide each result of section 13(d)(3)(i) by the number of acres of the first insured crop that were planted in each respective year (in the example in section 13(d)(3)(i), 50 divided by 100 equals 50 percent of the first insured crop acres that were double cropped in 2019 and 70 divided by 100 equals 70 percent of the first insured crop acres that were double cropped in 2020);

(iii) Add the results of section 13(d)(3)(ii) and divide by the number of years the first insured crop was double cropped (in the example in section 13(d)(3)(i), 50 plus 70 equals 120 divided by 2 equals 60 percent); and

(iv) Multiply the result of section 13(d)(3)(iii) by the number of insured acres of the first insured crop (in the example in section 13(d)(3)(i), 60 percent multiplied by the number of wheat acres insured in 2021);

* * * * *

PART 457 - COMMON CROP INSURANCE REGULATIONS

3. The authority citation for part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(o).

4. Amend § 457.8 as follows:

a. Under the heading “FCIC Policies”, revise the first and third paragraphs;

b. Under the heading “Reinsured Policies”, revise the first and third paragraphs;

c. In section 1:

i. In the definition of “approved yield”, in the last sentence, remove the words “FCIC approved procedures” and add “FCIC procedures” in their place;

ii. Revise the definition of “basic unit”;

- iii. In the definition of “claim for indemnity”, remove the words “FCIC issued procedures” and add “FCIC procedures” in their place;
- iv. In the definition of “production report”, in the last sentence, remove the words “FCIC approved procedures” and add “FCIC procedures” in their place;
- v. In the definition of “RMA’s website”, remove the website address “<http://www.rma.usda.gov/>” and add “www.rma.usda.gov” in its place; and
- vii. Revise the definitions of “second crop” and “veteran farmer or rancher”.
- d. In section 2:
 - i. Add paragraphs (e)(3) and (4);
 - ii. In paragraph (f)(2)(i)(D), remove the “; or” at the end of the paragraph and add a period in its place;
 - iii. Revise paragraph (f)(2)(iii)(B)(I);
 - iv. In paragraph (f)(2)(iii)(C) introductory text, remove the words “FCIC issued procedures” and add “FCIC procedures” in their place;
 - v. In paragraph (f)(2)(iii)(C)(I)(ii), remove the word “or” at the end of the paragraph;
 - vi. In paragraph (f)(2)(iii)(C)(I)(iii), remove the period at the end of the paragraph and add “; or” in its place; and
 - vii. Add paragraph (f)(2)(iii)(C)(I)(iv);
- e. In section 3, in paragraph (l) introductory text, add a comma following the phrase “or veteran farmer or rancher”;
- f. In section 4:
 - i. Revise paragraph (c); and

- ii. Add paragraph (d);
- g. In section 6, in paragraph (a)(3)(ii)(C), add the word “and” at the end of the paragraph;
- h. In section 7, in paragraph (h)(2)(i)(A), remove the words “FCIC approved procedures” and add “FCIC procedures” in their place;
- i. In section 14:
 - i. Revise paragraphs (b) introductory text and (b)(5) introductory text; and
 - ii. In paragraph (e)(1)(i), remove the words “can not” and add “cannot” in their place;
- j. In section 15:
 - i. In paragraph (c), remove the words “fire and hail” and add “hail and fire” in their place;
 - ii. Revise paragraph (g)(3)(i);
 - iii. Revise paragraph (h)(5)(i);
 - iii. Add paragraph (h)(7);
 - iv. Revise paragraph (i) introductory text; and
 - v. Add paragraph (i)(3);
- k. In section 17:
 - i. In paragraph (e)(1)(i)(B)(3), remove the word “lease” and add “leased” in its place;
 - ii. Add paragraph (e)(1)(iii)(C);
 - iii. In paragraph (f)(1)(iii), remove the word “contact” and add “contract” in its place;

- iv. Revise paragraph (f)(4)(ii);
- v. In paragraph (f)(5)(ii), remove the words “or cover”; and
- vi. Revise paragraph (h)(4);
- l. In section 33, in paragraph (b)(3), remove the words “Will be conclusively” and add “Conclusively” in their place;
- m. In section 34:
 - i. In paragraph (a)(4)(i)(B), remove the words “FCIC issued procedures” and add “FCIC procedures” in their place;
 - ii. Revise paragraph (a)(4)(viii)(C);
 - iii. In paragraph (c)(1)(i), remove the words “FCIC issued procedures” and add “FCIC procedures” in their place; and
 - iv. In paragraph (c)(1)(ii), remove the words “FCIC issued procedure” and add “FCIC procedures” in their place; and
- n. Revise section 36.

The revisions and additions read as follows:

§ 457.8 The application and policy.

* * * * *

FCIC Policies

This is an insurance policy issued by the Federal Crop Insurance Corporation (FCIC). The provisions of the policy may not be waived or modified in any way by us, your insurance agent or any employee of USDA unless the policy specifically authorizes a waiver or modification by written agreement. FCIC procedures (handbooks, manuals, memoranda, and bulletins), published on the RMA's website at www.rma.usda.gov or a

successor website will be used in the administration of this policy, including the adjustment of any loss or claim submitted under this policy.

* * * * *

AGREEMENT TO INSURE: In return for the payment of the premium, and subject to all of the provisions of this policy, we agree with you to provide the insurance as stated in this policy. If there is a conflict between the Act, the regulations in 7 CFR chapter IV, and FCIC procedures, the order of precedence is: (1) The Act; (2) the regulations; and (3) FCIC procedures. If there is a conflict between the policy provisions in 7 CFR part 457 and the administrative regulations in 7 CFR part 400, the policy provisions in 7 CFR part 457 control. If a conflict exists among the policy provisions, the order of precedence is: (1) The Catastrophic Risk Protection Endorsement, as applicable; (2) the Special Provisions; (3) the Commodity Exchange Price Provisions, as applicable; (4) the Crop Provisions; and (5) these Basic Provisions.

Reinsured Policies

This insurance policy is reinsured by the Federal Crop Insurance Corporation (FCIC) under the provisions of the Federal Crop Insurance Act (Act) (7 U.S.C. 1501 - 1524). All provisions of the policy and rights and responsibilities of the parties are specifically subject to the Act. The provisions of the policy may not be waived or varied in any way by us, our insurance agent or any other contractor or employee of ours, or any employee of USDA unless the policy specifically authorizes a waiver or modification by written agreement. We will use FCIC procedures (handbooks, manuals, memoranda and bulletins) published on the RMA's website at www.rma.usda.gov or a successor website, in the administration of this policy, including the adjustment of any loss or claim

submitted under this policy. In the event that we cannot pay your loss because we are insolvent or are otherwise unable to perform our duties under our reinsurance agreement with FCIC, your claim will be settled in accordance with the provisions of this policy and FCIC will be responsible for any amounts owed. No state guarantee fund will be liable for your loss.

* * * * *

AGREEMENT TO INSURE: In return for the payment of the premium, and subject to all of the provisions of this policy, we agree with you to provide the insurance as stated in this policy. If there is a conflict between the Act, the regulations in 7 CFR chapter IV, and FCIC procedures, the order of precedence is: (1) The Act; (2) the regulations; and (3) FCIC procedures. If there is a conflict between the policy provisions in 7 CFR part 457 and the administrative regulations in 7 CFR part 400, the policy provisions in 7 CFR part 457 apply. If a conflict exists among the policy, the order of precedence is: (1) The Catastrophic Risk Protection Endorsement, as applicable; (2) the Special Provisions; (3) the actuarial documents; (4) the Commodity Exchange Price Provisions, as applicable; (5) the Crop Provisions; and (6) these Basic Provisions.

* * * * *

1. Definitions

* * * * *

Basic unit. All insurable acreage of the insured crop in the county on the date coverage begins for the crop year excluding acreage reported and insured as an enterprise unit in which the remaining insurable acreage is reported and insured as a basic or optional unit:

(1) In which you have 100 percent crop share; or

(2) That is owned by one person and operated by another person on a share basis.

(Example: If, in addition to the land you own, you rent land from five landlords, three on a crop share basis and two on a cash basis, you would be entitled to four units; one for each crop share lease and one that combines the two cash leases and the land you own.)

Land that would otherwise be one unit may, in certain instances, be divided according to guidelines contained in section 34 of these Basic Provisions and in the applicable Crop Provisions.

* * * * *

Second crop. With respect to a single crop year, the next occurrence of planting any agricultural commodity for harvest following a first insured crop on the same acreage. The second crop may be the same or a different agricultural commodity as the first insured crop, except the term does not include a replanted crop. If following a first insured crop, a cover crop is planted on the same acreage and harvested for grain or seed it is considered to be a second crop. A cover crop that is covered by FSA's noninsured crop disaster assistance program (NAP) or receives other USDA benefits associated with forage crops will be considered a second crop. A crop meeting the conditions stated in this definition will be considered to be a second crop regardless of whether or not it is insured.

* * * * *

Veteran farmer or rancher. (1) An individual who has served active duty in the United States Army, Navy, Marine Corps, Air Force, or Coast Guard, including the

reserve components; was discharged or released under conditions other than dishonorable; and:

- (i) Has not operated a farm or ranch;
- (ii) Has operated a farm or ranch for not more than 5 years; or
- (iii) First obtained status as a veteran during the most recent 5-year period.

(2) A person, other than an individual, may be eligible for veteran farmer or rancher benefits if all substantial beneficial interest holders qualify individually as a veteran farmer or rancher in accordance with paragraph (1) of this definition. A spouse's veteran status does not impact whether an individual is considered a veteran farmer or rancher.

* * * * *

2. Life of Policy, Cancellation, and Termination

* * * * *

- (e) * * *

(3) For this agricultural commodity policy, your premium and administrative fees will be offset from any indemnity or prevented planting payment due to you even if it is prior to the premium billing date.

- (4) For any other agricultural commodity policy insured with us and it is:

- (i) Prior to the premium billing date, and you agree, your premium and administrative fees will be offset from any indemnity or prevented planting payment due to you; or

- (ii) On or after the premium billing date, your premium and administrative fees will be offset from any indemnity or prevented planting payment due to you.

(f) * * *

(2) * * *

(iii) * * *

(B) * * *

(I) In accordance with 7 CFR part 400, subpart U, and FCIC procedures, you provide documentation that your inadvertent failure to pay your debt is due to an unforeseen or unavoidable event or other extenuating circumstances that created the inadvertent failure for you to make timely payment;

* * * * *

(C) * * *

(I) * * *

(iv) For previously executed written payment agreements, you made the full payment of the scheduled payment amount owed within 15 calendar days after the missed payment date.

* * * * *

4. Contract Changes

* * * * *

(c) After the contract change date, all changes specified in section 4(b) will also be available upon request from your crop insurance agent.

(d) Not later than 30 days prior to the cancellation date for the insured crop you will be notified, in accordance with section 33, a copy of the changes to the Basic Provisions, Crop Provisions, Commodity Exchange Price Provisions, if applicable, and Special Provisions.

* * * *

14. Duties in the Event of Damage, Loss, Abandonment, Destruction, or
Alternative Use of Crop or Acreage

* * * *

(b) You must provide a notice of loss in accordance with this section. Notice provisions:

* * * *

(5) If you fail to submit a notice of loss in accordance with these notice provisions, any loss or prevented planting claim will be considered solely due to an uninsured cause of loss for the acreage for which such failure occurred, unless we determine that we have the ability to accurately adjust the loss. If we determine that we do not have the ability to accurately adjust the loss:

* * * *

15. Production Included in Determining an Indemnity and Payment Reductions

* * * *

(g) * * *

(3) * * *

(i) If a volunteer crop or cover crop is hayed, grazed, or cut for silage, haylage, or baleage from the same acreage, after the late planting period (or after the final planting date if a late planting period is not applicable) for the first insured crop in the same crop year, or is otherwise harvested any time after the late planting period (or after the final planting date if a late planting period is not applicable); or

* * * *

(h) * * *

(5) * * *

(i) You have double cropped acreage in at least 2 of the last 4 crop years in which the first insured crop was grown; or

* * * * *

(7) With respect to double cropped acreage for which one of the crops you have double cropped is insured under a plan of insurance not covered under these Basic Provisions, each insured crop must follow its own Basic Provisions, Crop Provisions, and Special Provisions to determine if the double cropping requirements have been met. If the double cropping requirements in the applicable Basic Provisions, Crop Provisions, or Special Provisions have not been met for each insured crop, section 15(e) of these Basic Provisions applies.

(i) If you provided acceptable records in accordance with section 15(h), your double cropping history is limited to the highest number of acres double cropped within the applicable 4-year period as determined in section 15(h)(5):

* * * * *

(3) If you acquired additional land for the current crop year and the following calculation results in a greater number of double cropping acres than determined in 15(i), you may apply the percentage of acres that you have previously double cropped to the total cropland acres that you are farming this year (if greater):

(i) Determine the number of acres of the first insured crop that were double cropped in each of the years for which double cropping records are provided (for example, records are provided showing: 100 acres of wheat planted in 2019 and 50 of

those acres were double cropped with soybeans; and 100 acres of wheat planted in 2020 and 70 of those acres were double cropped with soybeans);

(ii) Divide each result of section 15(i)(3)(i) by the number of acres of the first insured crop that were planted in each respective year (in the example in section 15(i)(3)(i), 50 divided by 100 equals 50 percent of the first insured crop acres that were double cropped in 2019 and 70 divided by 100 equals 70 percent of the first insured crop acres that were double cropped in 2020);

(iii) Add the results of section 15(i)(3)(ii) and divide by the number of years the first insured crop was double cropped (in the example in section 15(i)(3)(i), 50 plus 70 equals 120 divided by 2 equals 60 percent); and

(iv) Multiply the result of section 15(i)(3)(iii) by the number of insured acres of the first insured crop (in the example in section 15(i)(3)(i), 60 percent multiplied by the number of wheat acres insured in 2021);

* * * * *

17. Prevented Planting

* * * * *

(e) * * *

(1) * * *

(iii) * * *

(C) In the event that your contracted acreage or production for the current crop year is reduced, for a reason not solely due to the acreage being prevented from being planted, or you have no contracted acreage for the current crop year, and the reduction or

lack of contract results in no remaining eligible acres to use on your total cropland acres in the county:

(1) You must first exhaust all other eligible acres;

(2) The number of eligible acres for the contracted crop will be determined based on the number of acres or amount of production you contracted in the county in the previous crop year, less the current year's contracted acreage or production, if applicable;

(3) The prevented planting payment and premium will be calculated in accordance with section 17(h)(2);

(4) If you did not have a processor contract in place for the previous crop year, no eligible contracted acreage exists for this purpose.

* * * * *

(f) * * *

(4) * * *

(ii) For the insured crop that is prevented from being planted, you provide records acceptable to us of acreage and production that show (your double cropping history is limited to the highest number of acres double cropped within the applicable four-year period):

(A) You have double cropped acreage in at least 2 of the last 4 crop years in which the insured crop that is prevented from being planted in the current crop year was grown (you may apply your history of double cropping to any acreage of the insured crop in the county (for example, if you have double cropped 100 acres of wheat and soybeans in the county and you acquire an additional 100 acres in the county, you can apply that

history of double cropped acreage to any of the 200 acres in the county as long as it does not exceed 100 acres)); or

(B) The applicable acreage you are prevented from planting in the current crop year was double cropped for at least 2 of the last 4 crop years in which the insured crop that is prevented from being planted was grown. You may only use the history of double cropping for the same physical acres from which double cropping records were provided from one or more other producers (for example, if a neighbor has double cropped 100 acres of wheat and soybeans in the county and you acquire your neighbor's 100 double cropped acres and an additional 100 acres in the county, you can only apply your neighbor's history of double cropped acreage to the same 100 acres that your neighbor double cropped); and

* * * * *

(h) * * *

(4) Prevented planting coverage will be allowed as specified in section 17(h) only if the crop that was prevented from being planted meets all policy provisions, except for having an adequate base of eligible prevented planting acreage. Payment may be made based on crops other than those that were prevented from being planted even though other policy provisions, including but not limited to, processor contract and rotation requirements, have not been met for the crop whose eligible acres are being used. When you have exhausted eligible acres to provide prevented planting coverage for all insured cropland acres in your farming operation, you may use remaining eligible acres as established in section 17(e)(1)(iii)(C).

* * * * *

34. Units

- (a) * * *
- (4) * * *
- (viii) * * *

(C) If you elected separate enterprise units for both irrigated and non-irrigated practices and we discover you do not qualify for an enterprise unit for the irrigated or non-irrigated practice and such discovery is made:

(1) On or before the acreage reporting date, you may elect to insure:

(i) One enterprise unit for all irrigated or non-irrigated practices provided you meet the requirements in section 34(a)(4), and basic or optional units for the other practice, whichever you report on your acreage report and qualify for;

(ii) One enterprise unit for all acreage of the crop in the county provided you meet the requirements in section 34(a)(4); or

(iii) Basic or optional units for all acreage of the crop in the county, whichever you report on your acreage report and qualify for; or

(2) At any time after the acreage reporting date, your unit structure will be one enterprise unit for all acreage of the crop in the county provided you meet the requirements in section 34(a)(4). Otherwise, we will assign the basic unit structure.

* * * * *

36. Yield Options

If provided in the actuarial documents, you may elect the following measures to increase your approved yield:

(a) Adjustments to actual yields within a database:

(1) You may exclude and replace one or more actual yields, on an individual actual yield basis, that due to an insurable cause of loss, are less than 60 percent of the applicable transitional yield.

(i) Each election made in section 36(a)(1) must be made on or before the production reporting date for the insured crop and each such election will remain in effect for succeeding crop years unless canceled by the production reporting date for the succeeding crop year. If you cancel an election, the actual yield will be used in the database. For example, if you elected to substitute yields in your database for the 2020 and 2021 crop year, for any subsequent crop year, you can elect to cancel the substitution for either or both crop years.

(ii) Each excluded actual yield will be replaced with a yield equal to 60 percent of the applicable transitional yield for the crop year in which the yield is being replaced, unless you qualify as a beginning farmer or rancher, or veteran farmer or rancher, in which case the excluded actual yield will be replaced with a yield equal to 80 percent of the applicable transitional yield for the crop year in which the yield is being replaced. (For example, if you elect to exclude a 2020 crop year actual yield, the transitional yield in effect for the 2020 crop year in the county will be used. If you also elect to exclude a 2021 crop year actual yield, the transitional yield in effect for the 2021 crop year in the county will be used). The replacement yields will be used in the same manner as actual yields for the purpose of calculating the approved yield.

(iii) Once you have elected to exclude an actual yield from the database, the replacement yield will remain in effect until such time as that crop year is no longer

included in the database unless this election is canceled in accordance with section 36(a)(1)(i).

(iv) Although your approved yield will be used to determine your amount of premium owed, the premium rate will be increased to cover the additional risk associated with the substitution of higher yields.

(2) You may exclude any actual yield for any crop year when FCIC determines for a county, or its contiguous counties, the per planted acre yield was at least 50 percent below the simple average of the per planted acre yield for the crop in the county for the previous 10 consecutive crop years.

(3) You may replace actual yields determined using your post-quality production amounts with actual yields determined using your pre-quality production amounts for previous crop years on an individual actual yield basis.

(i) Each election made in section 36(a)(3) must be made on or before the sales closing date for the insured crop and will remain in effect, unless canceled by the sales closing date for the succeeding crop year.

(ii) In order to replace post-quality actual yields for previous crop years, you must have filed a notice of loss due to an insured cause of loss for the crop year to be eligible.

(iii) Once the pre-quality actual yield replaces the post-quality actual yield, the pre-quality actual yield will remain in effect until such time as that crop year is no longer included in the database, unless this election is canceled in accordance with section 36(a)(3)(i).

(iv) Although your approved yield will be used to determine your amount of premium owed, the premium rate will be increased to cover the additional risk associated with the replacement of higher pre-quality reduction based actual yields.

(b) You may make adjustments to your approved yield by limiting a reduction to the approved APH yield to a maximum decline of 10 percent of the previous crop year's approved APH yield when such reduction is due to a decline in production resulting from a natural disaster or other insurable loss, as provided in FCIC procedures.

* * * * *

5. Amend § 457.113 as follows:

- a. In the introductory text, remove the year “2020” and add “2021” in its place;
- b. In section 1 in the definition of “Not following another crop (NFAC)”, remove the words “a crop” and add “another crop.” in their place;
- c. In section 2, revise paragraphs (a)(1) and (a)(4)(i) and (ii);
- d. In section 8, revise the introductory text;
- e. In section 12, in paragraph (d)(4), remove the cross reference “12(d) (2)” and add “12(d)(2)” in its place.

The revisions read as follows:

§ 457.113 Coarse grains crop insurance provisions.

* * * * *

2. Unit Division

(a) * * *

(1) You may elect one enterprise unit for all FAC cropping practices or one enterprise unit for all NFAC cropping practices, or separate enterprise units for both

practices, unless otherwise specified in the Special Provisions. For example: you may choose an enterprise unit for all FAC acreage (soybeans irrigated practice and non-irrigated practice) and an enterprise unit for all NFAC acreage (soybeans irrigated practice and non-irrigated practice).

* * * * *

(4) * * *

(i) On or before the acreage reporting date, you may elect to insure:

(A) One enterprise unit for all FAC or NFAC cropping practices provided you meet the requirements in section 34(a)(4), and basic or optional units for the other cropping practice, whichever you report on your acreage report and qualify for; or

(B) One enterprise unit for all acreage of the crop in the county provided you meet the requirements in section 34(a)(4); or

(C) Basic or optional units for all acreage of the crop in the county, whichever you report on your acreage report and qualify for; or

(ii) At any time after the acreage reporting date, your unit structure will be one enterprise unit for all acreage of the crop in the county provided you meet the requirements in section 34(a)(4). Otherwise, we will assign the basic unit structure.

* * * * *

8. Insurance Period

In accordance with the provisions of section 11 of the Basic Provisions, unless otherwise specified in the actuarial documents, the calendar date for the end of the insurance period is the date immediately following planting as follows:

* * * * *

Martin Barbre,
Manager,
Federal Crop Insurance Corporation.
[FR Doc. 2020-13831 Filed: 6/26/2020 8:45 am; Publication Date: 6/29/2020]